

REMARKS

Summary of the Amendment

Upon entry of the above amendment, claims 1 and 25-27 will have been amended. Accordingly, claims 1-117 will be pending with claims 41-92 and 102-117 being withdrawn and with claims 1, 39 and 93 being in independent form.

Summary of the Official Action

In the instant Office Action, the Examiner reiterated the Restriction Requirement, withdrew claims 41-92 and 102-117. Finally, the Examiner rejected claims 1-40 and 93-101 over the art of record. Applicant submits that the rejections have been overcome, and respectfully requests reconsideration of the outstanding Office Action and allowance of the present application.

Present Amendment is Proper for Entry After Final Rejection

Applicant respectfully submits that the instant amendment is proper for entry after final rejection. Applicant notes that no question of new matter is presented nor are any new issues raised in entering the instant amendment of the claims and that no new search and/or further consideration would be required. Moreover, Applicant submits that the instant amendment places the application in condition for allowance, or at least in better form for appeal. Accordingly, Applicant requests the Examiner to enter the instant amendment, consider the merits of the same, and indicate the allowability of the present application and each of the pending claims. Applicant notes, in particular, that claim 1 has been amended to recite certain features which are believed to overcome the prior art

rejections. Furthermore, the Rule 1.131 Declaration is believed to overcome many of the prior art rejections.

Restriction Requirement

The Examiner reiterated the previous restriction requirement, withdrew claims 41-92 and 102-117 from examination. Applicant traverses the Restriction Requirement for the reasons already made of record. Furthermore, Applicant requests rejoinder of at least withdrawn claims 41-73 upon allowance of the non-withdrawn claims.

Traversal of Rejections Under 35 U.S.C. § 102

Over Finkelshtain

Applicant traverses the rejection of claims 1-15, 17-19 and 29-35 under 35 U.S.C. § 102(e) as being clearly anticipated by US Patent Application Publication No. 2003/0099876 to FINKELSHTAIN et al.

The Examiner asserted that this document discloses all the features recited in these claims including a cathode exposed to the atmosphere. Applicant respectfully traverse this rejection.

Notwithstanding the Office Action assertions as to what this document discloses, Applicant submits that this document fails to disclose, or even suggest: inter alia, a refillable fuel cell wherein the fuel cell is configured to at least one of receive fresh liquid and discharge spent liquid via at least one resealable opening, as recited in independent claim 1.

Applicant acknowledges that FINKELSHTAIN discloses a fuel cell which utilizes a cathode

14 that is exposed to atmospheric oxygen (see paragraph [0027]). However, it is clear from the drawings that FINKELSHTAIN does not disclose that the fuel cell is refillable, much less, that it is configured to at least one of receive fresh liquid and discharge spent liquid via at least one resealable opening (claim 1).

Thus, Applicant submits that the above-noted claims are not disclosed, or even suggested, by any proper reading of FINKELSHTAIN.

Applicant further notes that, for an anticipation rejection under 35 U.S.C. § 102 to be proper, each element of the claim in question must be disclosed in a single document, and if the document relied upon does not do so, then the rejection must be withdrawn.

Because FINKELSHTAIN fails to disclose at least the above mentioned features as recited in independent claim 1, Applicant submits that this document does not disclose all the claimed features recited in at least independent claim 1.

Furthermore, Applicant submits that the above-listed dependent are allowable at least for the reason that these claims depend from an allowable base claim and because these claims recite additional features that further define the present invention.

Applicant requests that the Examiner reconsider and withdraw the rejection of the above-noted claims under 35 U.S.C. § 102(e).

Over Thellmannn

Applicant traverses the rejection of claims 1 and 7 under 35 U.S.C. § 102(b) as being clearly anticipated by US Patent No. 3,365,334 to THELLMANN.

The Examiner asserted that this document discloses all the features recited in these claims including a cathode exposed to the atmosphere. Applicant respectfully traverse this rejection.

Notwithstanding the Office Action assertions as to what this document discloses, Applicant submits that this document fails to disclose, or even suggest: inter alia, a refillable fuel cell wherein the fuel cell is configured to at least one of receive fresh liquid and discharge spent liquid via at least one resealable opening, as recited in independent claim 1.

Applicant acknowledges that THELLMANN discloses a fuel cell which utilizes an electrode plate 19 that is exposed to oxygen (see col. 2, lines 23-44). However, the Examiner is not correct that THELLMANN teaches a cathode exposed to the atmosphere. THELLMANN instead teaches to deliver oxygen (not air as asserted by the Examiner) via inlet pipe 21. Additionally, since the plates 16 and 19 are located within the walls 11, neither of the electrode plates 16 and 19 are exposed to the atmosphere. Finally, it is clear from the drawings that THELLMANN does not disclose that the fuel cell is refillable, much less, that it is configured to at least one of receive fresh liquid and discharge spent liquid via at least one resealable opening (claim 1).

Thus, Applicant submits that the above-noted claims are not disclosed, or even suggested, by any proper reading of THELLMANN.

Applicant further notes that, for an anticipation rejection under 35 U.S.C. § 102 to be proper, each element of the claim in question must be disclosed in a single document, and if the document relied upon does not do so, then the rejection must be withdrawn.

Because THELLMANN fails to disclose at least the above mentioned features as recited in independent claim 1, Applicant submits that this document does not disclose all the claimed features

recited in at least independent claim 1.

Furthermore, Applicant submits that the above-listed dependent are allowable at least for the reason that these claims depend from an allowable base claim and because these claims recite additional features that further define the present invention.

Applicant requests that the Examiner reconsider and withdraw the rejection of the above-noted claims under 35 U.S.C. § 102(b).

Over Vielstich

Applicant traverses the rejection of claims 1, 5 and 7 under 35 U.S.C. § 102(b) as being clearly anticipated by US Patent No. 3,365,333 to VIELSTICH et al.

The Examiner asserted that this document discloses all the features recited in these claims including a cathode exposed to the atmosphere. Applicant respectfully traverse this rejection.

Notwithstanding the Office Action assertions as to what this document discloses, Applicant submits that this document fails to disclose, or even suggest: inter alia, a refillable fuel cell wherein the fuel cell is configured to at least one of receive fresh liquid and discharge spent liquid via at least one resealable opening, as recited in independent claim 1.

Applicant acknowledges that VIELSTICH discloses a fuel cell which utilizes an oxidizing gas electrode 21 that is apparently exposed to atmospheric oxygen (see col. 4, lines 47-57). However, VIELSTICH does not disclose that the fuel cell is refillable, much less, that it is configured to at least one of receive fresh liquid and discharge spent liquid via at least one resealable opening (claim 1).

Thus, Applicant submits that the above-noted claims are not disclosed, or even suggested, by any proper reading of VIELSTICH.

Applicant further notes that, for an anticipation rejection under 35 U.S.C. § 102 to be proper, each element of the claim in question must be disclosed in a single document, and if the document relied upon does not do so, then the rejection must be withdrawn.

Because VIELSTICH fails to disclose at least the above mentioned features as recited in independent claim 1, Applicant submits that this document does not disclose all the claimed features recited in at least independent claim 1.

Furthermore, Applicant submits that the above-listed dependent are allowable at least for the reason that these claims depend from an allowable base claim and because these claims recite additional features that further define the present invention.

Applicant requests that the Examiner reconsider and withdraw the rejection of the above-noted claims under 35 U.S.C. § 102(b).

Over Shimizu

Applicant traverses the rejection of claims 1, 5, 7, 39 and 93 under 35 U.S.C. § 102(b) as being clearly anticipated by US Patent No. 4,562,123 to SHIMIZU et al.

The Examiner asserted that this document discloses all the features recited in these claims including a cathode exposed to the atmosphere. Applicant respectfully traverse this rejection.

Notwithstanding the Office Action assertions as to what this document discloses, Applicant submits that this document fails to disclose, or even suggest: inter alia, a refillable fuel cell wherein

the fuel cell is configured to at least one of receive fresh liquid and discharge spent liquid via at least one resealable opening, as recited in independent claim 1; inter alia, a cartridge, wherein the fuel cell is configured to at least one of receive fresh liquid and discharge spent liquid from and/or to the cartridge via the sealable openings, as recited in independent claim 39; and inter alia, that said first chamber has a first liquid transfer port and a second liquid transfer port, said first and second ports being normally closed, as recited in independent claim 93.

Applicant acknowledges that SHIMIZU discloses a fuel cell which utilizes an air electrode 21 (see col. 8, lines 49-60). However, SHIMIZU does not disclose that the fuel cell is configured to at least one of receive fresh liquid and discharge spent liquid via at least one resealable opening (claim 1). Furthermore, SHIMIZU is silent with regard to a cartridge, wherein the fuel cell is configured to at least one of receive fresh liquid and discharge spent liquid from and/or to the cartridge via the sealable openings (claim 39). Finally, SHIMIZU is silent with regard to a first chamber having a first liquid transfer port and a second liquid transfer port, said first and second ports being normally closed (claim 93).

Thus, Applicant submits that the above-noted claims are not disclosed, or even suggested, by any proper reading of SHIMIZU.

Applicant further notes that, for an anticipation rejection under 35 U.S.C. § 102 to be proper, each element of the claim in question must be disclosed in a single document, and if the document relied upon does not do so, then the rejection must be withdrawn.

Because SHIMIZU fails to disclose at least the above mentioned features as recited in independent claims 1, 39 and 93, Applicant submits that this document does not disclose all the

claimed features recited in at least independent claims 1, 39 and 93.

Furthermore, Applicant submits that the above-listed dependent are allowable at least for the reason that these claims depend from an allowable base claim and because these claims recite additional features that further define the present invention.

Applicant requests that the Examiner reconsider and withdraw the rejection of the above-noted claims under 35 U.S.C. § 102(b).

Traversal of Rejections Under 35 U.S.C. § 103(a)

Rejections based on Ricks

Applicant respectfully traverses the rejection of claims 24-28 and 36 under 35 U.S.C. § 103(a) as unpatentable over THELLAMANN and/or VIELSTICH and/or SHIMIZU in view of US Patent Application Publication No. 2004/0175599 to RICKS et al.

Applicant also respectfully traverses the rejection of claims 39, 40 and 93-101 under 35 U.S.C. § 103(a) as unpatentable over THELLAMANN in view of RICKS.

Applicant additionally respectfully traverses the rejection of claims 39, 40 and 93-101 under 35 U.S.C. § 103(a) as unpatentable over VIELSTICH in view of RICKS.

Applicant additionally also respectfully traverses the rejection of claims 40 and 94-101 under 35 U.S.C. § 103(a) as unpatentable over SHIMIZU in view of RICKS.

The Examiner asserts that a fair combination of the teachings of these documents discloses or suggest all of the features of the above-noted claims. Applicant respectfully traverses this rejection.

Applicant submits that RICKS is not available as prior art based on the filing of the instant

Rule 1.131 Declaration, and, as such, the instant rejection is no longer valid.

Under § 1.131, a rejection based on a 35 U.S.C. § 102(e) reference may, upon a proper showing, be overcome by removing the printed publication as a reference against the claims. As such, Applicant submits that the § 1.131 Declaration submitted herewith is sufficient to overcome the § 102(e) reference, i.e., RICKS.

More specifically, Applicant submit that the concurrently filed Rule 1.131 Declaration is formally and substantively sufficient to establish that the Inventors had completed the invention defined in at least independent claims 1, 39 and 93 (as well as the dependent claims) in the United States and/or in the WTO country of Israel before the effective date of the RICKS reference, i.e., March 5, 2003.

The statements in the Declaration show that the formal requirements of § 1.131 are satisfied, namely:

- (1) the rejections to be overcome are based on § 102(e) prior art; and
- (2) all the acts for completing the invention of independent claims 1, 39 and 93, and those claims dependent thereon, were performed in the United States or the WTO country of Israel.

It is respectfully submitted that the statements in the Declaration are also sufficient to satisfy the substantive requirements of 37 C.F.R. § 131. The Declaration sets forth specific facts, of sufficient character and weight, to establish a **date of conception** before the March 5, 2003 effective date of the RICKS reference and to show that the Inventors and their attorney exercised **due diligence** from a time before the effective filing date of the RICKS reference to a constructive reduction to practice, i.e., to the filing date of the instant continuation application in the United States

on March 11, 2003, i.e., the US filing date of the provisional application upon which the instant application claims the benefit of under 35 USC 119(e).

DATE OF CONCEPTION

As stated in the Declaration, the Inventors conceived a refillable fuel cell comprising a casing, a cathode having a first surface and a second surface, at least part of the second surface being exposed to the atmosphere, an anode having a first surface and a second surface, a first chamber configured to retain liquid fuel, wherein the first chamber is defined at least partially by the first surface of the anode, and a second chamber configured to retain liquid electrolyte, wherein the second chamber is defined at least partially by the second surface of the anode and the first surface of the cathode, wherein the fuel cell is configured to be sealed in a substantially liquid-tight manner during at least a portion of its service life, and wherein the fuel cell is configured to at least one of receive fresh liquid and discharge spent liquid via at least one resealable opening, as recited in each of claims 1-38.

The Inventors also conceived a self-contained, refillable fuel cell comprising a cathode having a first surface and a second surface, at least part of the second surface being exposed to the atmosphere, an anode having a first surface and a second surface, a first chamber filled at least partially with a liquid fuel, the first chamber being defined at least partially by the first surface of the anode, a second chamber filled at least partially with a liquid electrolyte, the second chamber being defined at least partially by the second surface of the anode and the first surface of the cathode, at least one sealable opening communicating with the first chamber, at least one other sealable opening communicating with the second chamber, and a cartridge, wherein the fuel cell is configured to at

least one of receive fresh liquid and discharge spent liquid from and/or to the cartridge via the sealable openings, as recited in each of claims 39-73.

Additionally, the Inventors also conceived of a fuel cell system comprising a fuel cell assembly comprising a cathode having a first surface and a second surface, at least part of said second surface being exposed to air, an anode having a first surface and a second surface, a first chamber configured for containing a liquid fuel, said first chamber being defined at least partially by said first surface of said anode, wherein said first chamber has a first liquid transfer port and a second liquid transfer port, said first and second ports being normally closed, a second chamber configured for containing a liquid electrolyte, said second chamber being defined at least partially by said second surface of said anode and said first surface of said cathode, wherein said second chamber has a third liquid transfer port and a fourth liquid transfer port, said third and said fourth ports being normally closed and a cartridge removably connected to the fuel cell, as recited in each of claims 93-101

An Invention Disclosure is submitted with the Declaration as supporting evidence of this prior date of conception. It is respectfully submitted that the Invention Disclosure shows that the Inventors had a definite and permanent idea of the complete and operative invention of all the rejected claims prior to March 5, 2003, the earliest effective date of the reference.

Applicant notes that the Invention Disclosure includes the subject matter of the invention recited in the claims of the instant application. In particular, the Invention Disclosure, textually and pictorially (when compared to the drawings of the instant application which are substantially similar to those provided to patent counsel by the Inventors with the Invention Disclosure), shows the

features of independent claims 1, 39 and 93 (and the dependent claims). Also, Applicant submits and asserts that the Invention Disclosure was created before the March 5, 2003 earliest effective date of the RICKS reference.

Applicant further submits that the Declaration filed herewith shows, unequivocally, that the Inventors had in their possession a definite and permanent idea of the complete and operative invention of the pending claims before March 5, 2003 in a manner sufficient to satisfy the requirements of conception, as set forth in M.P.E.P. 715.07 and 2138.04, and thus constitute *prima facie* evidence of Applicant's date of conception of the invention in this or the WTO country of Israel before the earliest effective date of the reference.

DUE DILIGENCE

Applicant further submits that the Declaration shows the Inventors and their attorney exercised due diligence from a time before the March 5, 2003 earliest effective date of the RICKS reference to a constructive reduction to practice, realized by the filing of the above-identified parent application on March 11, 2003 in the United States.

The invention disclosure was submitted to the law firm employing patent counsel Heribert F. Muensterer before March 5, 2003. Communications between one or more of the Inventors and patent counsel took place until a final application was forwarded to the Inventors for final review and approval, and subsequent filing on March 11, 2003. In particular, communications took place between patent counsel and one or more of the Inventors at least between the time period of January 3, 2003 and March 11, 2003.

Counsel acted in an expeditious manner to prepare the application for filing. Under M.P.E.P.

§ 2138.06, only ***reasonable*** diligence is required in this regard. More specifically, § 2138.06 states that a patent attorney will be held to have exercised reasonable diligence if the attorney worked reasonably hard on the application during the critical period, taking into consideration any backlog of unrelated cases the attorney may have had and his completion of those cases along with the present application in chronological order. Applicant respectfully submits that patent counsel acted sufficiently expeditiously to satisfy the requirements of due diligence.

Thus, Applicant submits that the Declaration submitted herewith is sufficient to show that due diligence was exercised as required under 37 C.F.R. § 131. At least one Inventor remained in regular contact with patent counsel to answer questions, provide technical explanation, and supply the supplemental disclosure materials and/or information necessary for allowing the application to be filed in an expeditious manner.

Accordingly, Applicant requests that the Examiner reconsider and withdraw the above-noted rejection under 35 U.S.C. § 103(a) and indicate that these claims are allowable over the applied art of record.

Over Thellamann and/or Vielstich and/or Shimizu

Applicant respectfully traverses the rejection of claims 15 and 16 under 35 U.S.C. § 103(a) as unpatentable over THELLAMANN and/or VIELSTICH and/or SHIMIZU.

The Examiner asserted that these documents alone or in combination disclose or suggest all the features recited in these dependent claims. Applicant respectfully traverse this rejection.

Notwithstanding the Office Action assertions as to what these documents disclose or suggest,

Applicant submits that no proper combination of these documents discloses or suggests: inter alia, a refillable fuel cell wherein the fuel cell is configured to at least one of receive fresh liquid and discharge spent liquid via at least one resealable opening, as recited in independent claim 1.

As explained above, while Applicant acknowledges that THELLMANN discloses a fuel cell which utilizes an electrode plate 19 that is exposed to oxygen (see col. 2, lines 23-44), the Examiner is not correct that THELLMANN teaches a cathode exposed to the atmosphere. THELLMANN instead teaches to deliver oxygen (not air as asserted by the Examiner) via inlet pipe 21. Additionally, since the plates 16 and 19 are located within the walls 11, neither of the electrode plates 16 and 19 are exposed to the atmosphere. Finally, it is clear from the drawings that THELLMANN does not disclose that the fuel cell is refillable, much less, that it is configured to at least one of receive fresh liquid and discharge spent liquid via at least one resealable opening (claim 1).

With regard to VIELSTICH, Applicant acknowledges that VIELSTICH discloses a fuel cell which utilizes an oxidizing gas electrode 21 that is apparently exposed to atmospheric oxygen (see col. 4, lines 47-57). However, VIELSTICH does not disclose that the fuel cell is refillable, much less, that it is configured to at least one of receive fresh liquid and discharge spent liquid via at least one resealable opening (claim 1).

With regard to SHIMIZU, Applicant acknowledges that SHIMIZU discloses a fuel cell which utilizes an air electrode 21 (see col. 8, lines 49-60). However, SHIMIZU does not disclose that the fuel cell is configured to at least one of receive fresh liquid and discharge spent liquid via at least one resealable opening (claim 1).

Thus, Applicant submits that the above-noted claims are not disclosed, or even suggested, by any proper reading or combination of THELLMANN, VIELSTICH and SHIMIZU.

Because the teachings of these documents fail to disclose or suggest at least the above mentioned features as recited in independent claim 1, Applicant submits that these documents do not disclose all the claimed features recited in at least independent claim 1.

Furthermore, Applicant submits that the above-listed dependent are allowable at least for the reason that these claims depend from an allowable base claim and because these claims recite additional features that further define the present invention.

Applicant requests that the Examiner reconsider and withdraw the rejection of the above-noted claims under 35 U.S.C. § 103(a).

Over Thellamann and/or Vielstich and/or Shimizu with Finelli

Applicant respectfully traverses the rejection of claims 20 and 21 under 35 U.S.C. § 103(a) as unpatentable over THELLAMANN and/or VIELSTICH and/or SHIMIZU in view of US Patent No. 3,880,809 to FINELLI.

The Examiner asserted that these documents alone or in combination disclose or suggest all the features recited in these dependent claims. Applicant respectfully traverse this rejection.

Notwithstanding the Office Action assertions as to what these documents disclose or suggest, Applicant submits that no proper combination of these documents discloses or suggests: inter alia, a refillable fuel cell wherein the fuel cell is configured to at least one of receive fresh liquid and discharge spent liquid via at least one resealable opening, as recited in independent claim 1.

As explained above, while Applicant acknowledges that THELLMANN discloses a fuel cell which utilizes an electrode plate 19 that is exposed to oxygen (see col. 2, lines 23-44), the Examiner is not correct that THELLMANN teaches a cathode exposed to the atmosphere. THELLMANN instead teaches to deliver oxygen (not air as asserted by the Examiner) via inlet pipe 21. Additionally, since the plates 16 and 19 are located within the walls 11, neither of the electrode plates 16 and 19 are exposed to the atmosphere. Finally, it is clear from the drawings that THELLMANN does not disclose that the fuel cell is refillable, much less, that it is configured to at least one of receive fresh liquid and discharge spent liquid via at least one resealable opening (claim 1).

With regard to VIELSTICH, Applicant acknowledges that VIELSTICH discloses a fuel cell which utilizes an oxidizing gas electrode 21 that is apparently exposed to atmospheric oxygen (see col. 4, lines 47-57). However, VIELSTICH does not disclose that the fuel cell is refillable, much less, that it is configured to at least one of receive fresh liquid and discharge spent liquid via at least one resealable opening (claim 1).

With regard to SHIMIZU, Applicant acknowledges that SHIMIZU discloses a fuel cell which utilizes an air electrode 21 (see col. 8, lines 49-60). However, SHIMIZU does not disclose that the fuel cell is configured to at least one of receive fresh liquid and discharge spent liquid via at least one resealable opening (claim 1).

FINELLI does not cure the deficiencies of THELLAMANN, VIELSTICH and SHIMIZU. Applicant acknowledges that FINELLI discloses a fuel container material (see Abstract). However, FINELLI does not disclose or suggest a fuel cell, much less, that the fuel cell is configured to at least

one of receive fresh liquid and discharge spent liquid via at least one resealable opening (claim 1).

Thus, Applicant submits that the above-noted claims are not disclosed, or even suggested, by any proper reading or combination of THELLMANN, VIELSTICH, SHIMIZU and FINELLI.

Because the teachings of these documents fail to disclose or suggest at least the above-mentioned features as recited in independent claim 1, Applicant submits that these documents do not disclose all the claimed features recited in at least independent claim 1.

Furthermore, Applicant submits that the above-listed dependent are allowable at least for the reason that these claims depend from an allowable base claim and because these claims recite additional features that further define the present invention.

Applicant requests that the Examiner reconsider and withdraw the rejection of the above-noted claims under 35 U.S.C. § 103(a).

Over Thellamann and/or Vielstich and/or Shimizu with Delfino

Applicant respectfully traverses the rejection of claims 22 and 23 under 35 U.S.C. § 103(a) as unpatentable over THELLAMANN and/or VIELSTICH and/or SHIMIZU in view of US Patent No. 3,288,644 to DELFINO.

The Examiner asserted that these documents alone or in combination disclose or suggest all the features recited in these dependent claims. Applicant respectfully traverse this rejection.

Notwithstanding the Office Action assertions as to what these documents disclose or suggest, Applicant submits that no proper combination of these documents discloses or suggests: inter alia, a refillable fuel cell wherein the fuel cell is configured to at least one of receive fresh liquid and

discharge spent liquid via at least one resealable opening, as recited in independent claim 1.

As explained above, while Applicant acknowledges that THELLMANN discloses a fuel cell which utilizes an electrode plate 19 that is exposed to oxygen (see col. 2, lines 23-44), the Examiner is not correct that THELLMANN teaches a cathode exposed to the atmosphere. THELLMANN instead teaches to deliver oxygen (not air as asserted by the Examiner) via inlet pipe 21. Additionally, since the plates 16 and 19 are located within the walls 11, neither of the electrode plates 16 and 19 are exposed to the atmosphere. Finally, it is clear from the drawings that THELLMANN does not disclose that the fuel cell is refillable, much less, that it is configured to at least one of receive fresh liquid and discharge spent liquid via at least one resealable opening (claim 1).

With regard to VIELSTICH, Applicant acknowledges that VIELSTICH discloses a fuel cell which utilizes an oxidizing gas electrode 21 that is apparently exposed to atmospheric oxygen (see col. 4, lines 47-57). However, VIELSTICH does not disclose that the fuel cell is refillable, much less, that it is configured to at least one of receive fresh liquid and discharge spent liquid via at least one resealable opening (claim 1).

With regard to SHIMIZU, Applicant acknowledges that SHIMIZU discloses a fuel cell which utilizes an air electrode 21 (see col. 8, lines 49-60). However, SHIMIZU does not disclose that the fuel cell is configured to at least one of receive fresh liquid and discharge spent liquid via at least one resealable opening (claim 1).

DELFINO does not cure the deficiencies of THELLAMANN, VIELSTICH and SHIMIZU. Applicant acknowledges that DELFINO discloses a fuel cell having a metal casing 7 (see col. 4, lines

16-17). However, DELFINO does not disclose or suggest a fuel cell configured to at least one of receive fresh liquid and discharge spent liquid via at least one resealable opening (claim 1).

Thus, Applicant submits that the above-noted claims are not disclosed, or even suggested, by any proper reading or combination of THELLMANN, VIELSTICH, SHIMIZU and DELFINO.

Because the teachings of these documents fail to disclose or suggest at least the above-mentioned features as recited in independent claim 1, Applicant submits that these documents do not disclose all the claimed features recited in at least independent claim 1.

Furthermore, Applicant submits that the above-listed dependent are allowable at least for the reason that these claims depend from an allowable base claim and because these claims recite additional features that further define the present invention.

Applicant requests that the Examiner reconsider and withdraw the rejection of the above-noted claims under 35 U.S.C. § 103(a).

Over Thellamann and/or Vielstich and/or Shimizu with Reiser

Applicant respectfully traverses the rejection of claims 37 and 38 under 35 U.S.C. § 103(a) as unpatentable over THELLAMANN and/or VIELSTICH and/or SHIMIZU in view of US Patent Application Publication No. 2003/0207162 to REISER.

The Examiner asserted that these documents alone or in combination disclose or suggest all the features recited in these dependent claims. Applicant respectfully traverse this rejection.

Notwithstanding the Office Action assertions as to what these documents disclose or suggest, Applicant submits that no proper combination of these documents discloses or suggests: inter alia, a

refillable fuel cell wherein the fuel cell is configured to at least one of receive fresh liquid and discharge spent liquid via at least one resealable opening, as recited in independent claim 1.

As explained above, while Applicant acknowledges that THELLMANN discloses a fuel cell which utilizes an electrode plate 19 that is exposed to oxygen (see col. 2, lines 23-44), the Examiner is not correct that THELLMANN teaches a cathode exposed to the atmosphere. THELLMANN instead teaches to deliver oxygen (not air as asserted by the Examiner) via inlet pipe 21. Additionally, since the plates 16 and 19 are located within the walls 11, neither of the electrode plates 16 and 19 are exposed to the atmosphere. Finally, it is clear from the drawings that THELLMANN does not disclose that the fuel cell is refillable, much less, that it is configured to at least one of receive fresh liquid and discharge spent liquid via at least one resealable opening (claim 1).

With regard to VIELSTICH, Applicant acknowledges that VIELSTICH discloses a fuel cell which utilizes an oxidizing gas electrode 21 that is apparently exposed to atmospheric oxygen (see col. 4, lines 47-57). However, VIELSTICH does not disclose that the fuel cell is refillable, much less, that it is configured to at least one of receive fresh liquid and discharge spent liquid via at least one resealable opening (claim 1).

With regard to SHIMIZU, Applicant acknowledges that SHIMIZU discloses a fuel cell which utilizes an air electrode 21 (see col. 8, lines 49-60). However, SHIMIZU does not disclose that the fuel cell is configured to at least one of receive fresh liquid and discharge spent liquid via at least one resealable opening (claim 1).

REISER does not cure the deficiencies of THELLAMANN, VIELSTICH and SHIMIZU. Applicant acknowledges that REISER discloses a power system which also utilizes a fuel cell (see {P25032 00389454.DOC}

col. 4, lines 16-17). However, REISER does not disclose or suggest a fuel cell configured to at least one of receive fresh liquid and discharge spent liquid via at least one resealable opening (claim 1).

Thus, Applicant submits that the above-noted claims are not disclosed, or even suggested, by any proper reading or combination of THELLMANN, VIELSTICH, SHIMIZU and REISER.

Because the teachings of these documents fail to disclose or suggest at least the above mentioned features as recited in independent claim 1, Applicant submits that these documents do not disclose all the claimed features recited in at least independent claim 1.

Furthermore, Applicant submits that the above-listed dependent are allowable at least for the reason that these claims depend from an allowable base claim and because these claims recite additional features that further define the present invention.

Applicant requests that the Examiner reconsider and withdraw the rejection of the above-noted claims under 35 U.S.C. § 103(a).

CONCLUSION

In view of the foregoing, it is submitted that none of the references of record, either taken alone or in any proper combination thereof, anticipate or render obvious the Applicant's invention, as recited in each of the pending claims. The applied references of record have been discussed and distinguished, while significant claimed features of the present invention have been pointed out.

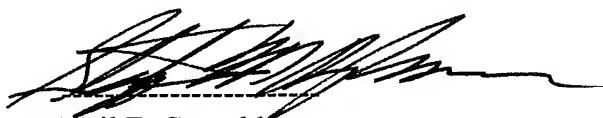
Further, any amendments to the claims which have been made in this response and which have not been specifically noted to overcome a rejection based upon the prior art, should be considered to have been made for a purpose unrelated to patentability, and no estoppel should be deemed to attach thereto.

Accordingly, reconsideration of the outstanding Office Action and allowance of the present application and all the claims therein are respectfully requested and now believed to be appropriate.

The Commissioner is hereby authorized to refund excess payments and charge any additional fee necessary to have this paper entered to Deposit Account No. 19-0089.

Should the Examiner have any questions or comments, he is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,
G. FINKELSHTAIN et al.



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Reg. No. 31,296

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